

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-275
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-275, Hawaii Administrative Rules, entitled "Rules Governing Procedures for Historic Preservation Review for Governmental Projects Covered Under Sections 6E-7 and 6E-8, HRS", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 275

RULES GOVERNING PROCEDURES FOR HISTORIC PRESERVATION
REVIEW FOR GOVERNMENTAL PROJECTS COVERED UNDER
SECTIONS 6E-7 AND 6E-8, HRS

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§13-275-1 Purpose, applicability, and participants. (a) The purpose of this chapter is to promote the use and conservation of historic properties for the education, inspiration, pleasure, and enrichment of the citizens of Hawaii by presenting a historic preservation review process for state and county projects. The review process is designed to

area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Architectural inventory survey" means the identification and documentation of architectural historic properties in a delineated area and providing the information to the department.

"Architectural recordation" means the form of mitigation that records and analyzes through architectural study a reasonable and adequate amount of the information about a significant historic property.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consensus determination" means the evaluation of a historic property's significance, arrived at by the consensus of the SHPD and the agency.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Detailed mitigation plan" means the specific plan for mitigation, including, but not limited to, a preservation plan, an archaeological data recovery plan, an ethnographic documentation plan, a historic data recovery plan, a burial treatment plan, and an architectural recordation plan. The detailed mitigation plan serves as a scope of work for mitigation.

"Determination letter" means the SHPD's written response which either concurs or does not concur with an agency's proposed project.

"Ethnographic documentation" means the form of mitigation that records and analyzes a reasonable and adequate amount of information about a significant historic property, through interviews with knowledgeable individuals and the study of historical source materials.

"Ethnographic inventory survey" means the identification and documentation of historic properties in a delineated area, gathering information through interviews with individuals knowledgeable about the area and a study of historical source materials.

"Hawaii historic places review board" means the governor appointed board established by section 6E-5.5, HRS.

"Historic data recovery" means the form of mitigation that records, compiles, and analyzes a reasonable and adequate amount of information about a significant historic property prior to its destruction, through the study of historical source materials.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Interested persons" means those organizations and individuals that are concerned with the effect of a project on historic properties.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic documentation, historic data recovery, and architectural recordation.

"Mitigation commitment" means the commitment to the form of mitigation to be undertaken for each significant historic property.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsections 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
[Eff _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-3 Obtaining a determination letter; generally. (a) For the department to provide a letter of determination, an agency proposing a project which may have an effect upon historic properties shall notify the department of the proposed project and request a letter of determination. Upon the request of the department, the agency shall provide the department with information as to the number of historic properties within a proposed project area, their significance, the impact of the proposed project on the historic properties, and any proposed mitigation measures. Upon receipt of adequate information the department will provide a determination letter within ninety days. Any agency involved in the historic preservation review process shall consult and obtain the written approval of the SHPD at each step of the review. Once concurrence is received, the agency may begin the project. In cases where interim protection plans are adequately in place or data recovery fieldwork has been adequately completed, a determination letter may be issued.

(b) The review steps, to be described in greater detail in the following sections, are as follows:

- (1) Identification and inventory, to determine if historic properties are present in the project's area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments, committing to acceptable forms of mitigation in order to properly handle or minimize impacts to significant properties;
- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and

(6) Verification of completion of detailed mitigation plan.

(c) Documents for review steps one through four shall be submitted concurrently.

(d) A receipt date will be stamped on all review documents received by the SHPD.

(e) The SHPD shall send its written comments on each step's submittal to the agency within the amount of time specified under each section of this chapter, or by a mutually agreed upon date. Copies of SHPD written comments will also be sent to any interested persons who have expressed concerns with the project by that point in the process. If the SHPD fails to send written comments within the set time, or by a mutually agreed upon date, then the SHPD is presumed to concur with the agency's submittal.

(f) The SHPD shall consider interested persons' comments on any submittals' acceptability in accordance with this chapter and chapters 13-276 through 13-283. Comments must be submitted in writing to the SHPD within thirty days of the SHPD's posting a notice of "no historic properties affected" determination or posting a notice of SHPD receipt of information. The SHPD shall post notice every Friday of receipt of relevant documents and of issuance of SHPD "no historic properties affected" or receipt of information. The notice shall be posted at the SHPD office and on the SHPD's website. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons shall contact the SHPD to obtain copies of this notice, or to find locations of documents, should they wish to review them.

(g) If the agency or interested persons disagree with the accuracy of the SHPD's determination and if disagreements cannot be resolved through meetings with the SHPD, an appeal may be made to the Hawaii historic places review board within thirty days of the SHPD's determination letter. An appeal is initiated by a written request to the Hawaii historic places review board to appeal a SHPD determination.

[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8)

§13-275-4 Fees. (a) The division may require a \$25 filing fee per request for a determination letter.

In addition, filing fees will be charged for the following:

- (1) \$50 for an archaeological assessment report;
- (2) \$150 for an archaeological inventory survey plan;
- (3) \$450 for an archaeological, architectural or ethnographic inventory survey report;
- (4) \$150 for a preservation plan;
- (5) \$25 for a monitoring plan;
- (6) \$150 for an archaeological data recovery plan;
- (7) \$250 for a burial treatment plan;
- (8) \$100 for a monitoring report, if resources are reported;
- (9) \$450 for an archaeological data recovery report;
- (10) \$450 for an ethnographic documentation report;
- (11) \$25 for a burial disinterment report; and
- (12) \$50 for an osteological analysis report.

(b) Preservation plans submitted to the division for review will be charged for each of the above plans they contain.

(c) Reports or plans submitted to the SHPD for review shall be accompanied by the appropriate fee. Reports or plans will not be considered received or reviewed, until the filing fees are paid.

(d) No fee will be charged for the review of any revisions to a previously submitted plan or report.

(e) All fees shall be payable to the Hawaii historic preservation special fund.

[Eff] (Auth: HRS §§6E-3, 6E-16)
(Imp: HRS §§6E-3, 6E-16)

§13-275-5 Identification and inventory of historic properties. (a) The agency shall be responsible for determining whether historic properties are present in the project area and, if so, to properly identify and inventory the properties.

(b) An agency shall first consult the SHPD to determine if the area proposed for the project needs to undergo an inventory survey to determine if historic properties are present. The tax map key for the parcel or parcels involved and a map shall be submitted to the SHPD to locate and define the boundaries of the project area. The SHPD shall supply a response in writing within thirty days of the receipt of the initiating

request at the SHPD office. This response shall include a justification by the SHPD for its conclusion.

- (1) If the SHPD concludes that no significant historic sites are likely to be present then the SHPD will make this determination in the form of a "no historic properties affected" letter within thirty days of receipt of the request.
- (2) Alternatively, the agency can submit documents claiming no significant historic sites are likely to be present. The document must present supportive evidence documenting any land altering activities (including areal extent and depth of disturbances) and documenting the likely nature and depth of historic properties that may have once existed in the area. The SHPD shall respond in writing within thirty days of receipt of the request.
 - (A) If the SHPD agrees that no significant historic properties are present, then the SHPD shall issue a written concurrence to the agency in the form of a "no historic properties affected" determination and historic preservation review ends; or
 - (B) If the SHPD does not find the documentation satisfactory, then a letter shall be sent to the agency specifying why. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed, and resubmit the documentation or shall conduct an inventory survey, whichever is required.
- (3) The SHPD will make all "no historic properties affected" determinations available to interested persons by posting notice every Friday of all such determinations either at the SHPD office or on the SHPD website. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons have the opportunity to submit written comments on such determinations within thirty days of the notice's posting. Should historic properties be reported to the

SHPD during these thirty days the SHPD may reconsider its concurrence under the provisions of section 13-275-11.

- (4) If the SHPD determines that an adequate survey exists and that historic properties are present, then the agency shall proceed to the next step in the review process, evaluation of the significance of the historic properties according to section 13-275-6.
- (5) If the SHPD concludes an inventory survey needs to be done, this survey shall identify all historic properties and gather enough information to evaluate the properties' significance. Inventory surveys fall into three main categories, and the SHPD will indicate which category or combination of categories is needed.
 - (A) An archaeological inventory survey may be undertaken when the SHPD concludes that archaeological properties are present or are likely to be present. Archaeological survey often involves detailed field mapping and test excavations, laboratory analyses, and interpretive studies. An archaeological permit, issued by the SHPD, as set forth in chapter 13-282, is required for this survey and any lesser level of archaeological survey work. The survey must be directed by a qualified archaeologist who meets the qualifications set forth in chapter 13-281. Results of the survey shall be reported either through an archaeological assessment, if no sites were found, or an archaeological survey report which meets the minimum standards set forth in chapter 13-276. An archaeological assessment shall include the information on the property and the survey methodology as set forth in subsections 13-276-5(a) and (c), as well as a brief background section discussing the former landuse and types of sites that might have been previously present.
 - (B) An ethnographic survey may be undertaken when the SHPD concludes that historic

properties which may be significant under criterion "e" of paragraph 13-275-6(b)(5) are present or are likely to be present within the project area and when the project area is known to have been used by members of an ethnic community at least fifty years ago or by preceding generations. Guidelines for this survey can be obtained from the SHPD. The survey must be directed by a qualified ethnographer who meets the qualifications set forth in chapter 13-281.

- (C) An architectural inventory survey may be undertaken when the SHPD concludes that historic buildings, structures, objects, or districts are present or are likely to be present within the project area. Information shall be of sufficient quality to either complete a National Register of Historic Places nomination form, or have SHPD agree it provides an adequate basis for making historic preservation decisions. The survey must be directed by a qualified historian, architect or architectural historian who meets the qualifications set forth in chapter 13-281.

(c) Should the SHPD believe unusual archaeological conditions may be present in a project area, such as the presence of paleo-environmental materials or historic archaeology, the division may require an inventory plan be submitted for approval prior to the undertaking of any inventory survey work. This plan shall include, but not be limited to:

- (1) All the information required in subsections 13-276-5 (a) and (b) which identifies the project area, identifies the project owner, describes the environment, provides the results of background research, as appropriate, and reviews any relevant prior archaeological studies.
- (2) A research design for the identification of historic properties within the project area. This would be a section on the methods to be used in the archaeological field survey which shall include:

- (A) The names and qualifications of the principal investigator;
 - (B) The anticipated number of field personnel, and any specialized qualifications which they might possess;
 - (C) The anticipated duration of time for the survey;
 - (D) The extent of survey coverage, as appropriate. If the coverage is to be less than one hundred percent, the rationale for the sample (the sampling design) must be presented in a careful discussion. Sampling designs which include analysis of possible subsurface sites under sand dunes, urban fill, and other areas must also be presented here;
 - (E) A discussion of any factors which might limit the survey effort, if appropriate;
 - (F) The techniques to be used to identify archaeological properties (transects, sweeps, test excavations, augering, etc.);
 - (G) The anticipated extent of historic property recording (mapping, measuring, photographing, test excavations) and the techniques to be used, with the rationale for these techniques given, if appropriate; and
 - (H) The method to be used to plot site location, if appropriate.
- (3) Information obtained through the consultation process with individuals knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals. This section would include all the information required in subsection 13-276-5(g).
- (d) If an inventory plan is required, once it is completed, one copy of the inventory plan shall be submitted to the SHPD for review. The plan shall meet the above requirements. The SHPD shall inform the agency within thirty days of receipt of the plan if the information contained in the plan is adequate or inadequate.
- (1) Any interested persons may comment on the plan. Comments must be submitted in writing to the SHPD within thirty days of the SHPD

posting notice of the receipt of the plan. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD may reconsider its determination under the provisions of section 13-275-11.

- (2) If the SHPD determines that the plan is inadequate, then a letter shall be sent to the agency stating why the plan is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
- (3) If the SHPD finds the plan adequate, then the agency will be sent a written notice of acceptance.

(e) If an inventory survey is needed, once it is completed, one copy of the inventory survey report or, if appropriate, an archaeological assessment shall be submitted to the SHPD for review. The report shall meet the requirements noted in chapter 13-276 for archaeology; shall conform with the SHPD guidelines for ethnography; or shall meet the requirements to complete a National Register of Historic Places nomination form or forms for architecture. When consultation is required, as specified in any of the reporting rules or guidelines for surveys, the report will include a summary of the consultation. The SHPD shall inform the agency within forty five days of receipt of the report or archaeological assessment if the information contained in the report or archaeological assessment is adequate or inadequate.

- (1) Any interested persons may comment on the survey report or archaeological assessment. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the report or assessment. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD may reconsider its determination under the provisions of section 13-275-11.

- (2) If the SHPD determines that the survey, report, or assessment is inadequate (e.g., survey failed to cover the entire project area, historic properties are incompletely described, etc.), then a letter shall be sent to the agency stating why the inventory survey is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
- (3) If the SHPD finds the report or archaeological assessment adequate, then the agency will be sent a written notice of acceptance. Once the survey report or archaeological assessment is accepted, seven copies of the report or assessment shall be provided by the agency to the following repositories: two copies shall be sent to the SHPD library with one copy going to the relevant SHPD neighbor island office's library, one copy shall be sent to the University of Hawaii at Manoa Hamilton Library Pacific Collection, one copy shall be sent to the Bishop Museum library, one copy shall be sent to the University of Hawaii at Hilo library, one copy shall be sent to the Maui Community College library, and one copy sent to the Kauai Community College library.

(f) If the SHPD gives the archaeological assessment or report final acceptance and if no historic properties are present, then historic preservation review ends and the SHPD shall include in the notice of final acceptance its written concurrence to the project in the form of a "no historic properties affected" determination.

(g) If the SHPD finds the report adequate and historic properties are present, then the significance of each property shall be evaluated as discussed in the following section. [Eff] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-6 Evaluation of significance. (a) Once a historic property is identified, then an assessment of significance shall occur. The agency shall make this assessment or delegate this assessment, in

writing, to the SHPD. This information shall be submitted in the survey report, if historic properties were found through the survey.

(b) To be significant, a historic property shall possess integrity of location, design, setting, materials, workmanship, feeling, and association and shall meet one or more of the following criterion:

- (1) Criterion "a". Be associated with events that have made an important contribution to the broad patterns of our history;
- (2) Criterion "b". Be associated with the lives of persons important in our past;
- (3) Criterion "c". Embody the distinctive characteristics of a type, period, or method of construction, represent the work of a master, or possess high artistic value;
- (4) Criterion "d". Have yielded, or is likely to yield, information important for research on prehistory or history; or
- (5) Criterion "e". Have an important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

A group of sites can be collectively argued to be significant under any of the criteria.

(c) Prior to submission of significance evaluations for properties other than architectural properties, the agency shall consult with ethnic organizations or members of the ethnic group for whom some of the historic properties may have significance under criterion "e" to seek their views on the significance evaluations. For native Hawaiian properties which may have significance under criterion "e" the Office of Hawaiian Affairs also shall be consulted.

(d) Significance assessments shall be submitted to the SHPD for review. The concurrence of the SHPD is required before significance is finalized. The SHPD shall agree or disagree with the significance evaluations within forty five days of receipt of the significance evaluations.

- (1) The assessment shall:
 - (A) Present a table which lists each historic property and identifies all applicable criteria of significance for each property;
 - (B) Provide justification for classifying the property within these criteria, it being allowable to make this justification general for similar types of archaeological sites; and
 - (C) Provide evidence of any consultation shall be submitted with the assessment, to include:
 - (i) A description of the consultation process used;
 - (ii) A list of the individuals or organizations contacted; and
 - (iii) A summary of the views and concerns expressed.
- (2) If the SHPD disagrees with the initial significance assessments or if it believes more information is needed to evaluate the significance of a historic property, a letter shall be sent to the agency presenting the SHPD's findings. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the initial significance assessments.
- (3) If the SHPD agrees with the initial significance assessments, a letter of agreement shall be sent to the agency. Once agreement is reached on significance of the properties, the SHPD shall enter all significance assessments in the Hawaii inventory of historic places, as consensus determinations.
- (e) If there is an agreement that none of the historic properties are significant, then historic preservation review ends and SHPD shall issue its written concurrence to the project in the form of a "no historic properties affected" determination. When significant historic properties are present, then impacts of the proposed action on these properties shall be assessed, and mitigation commitments shall be devised as needed. [Eff _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-7 Determining effects to significant historic properties. (a) The effects or impacts of a project on significant properties shall be determined by the agency. Effects include direct as well as indirect impacts. One of the following effect determinations must be established:

- (1) "No historic properties affected". The project will have no effect on significant historic properties; or
- (2) "Effect, with proposed mitigation commitments". The project will affect one or more significant historic properties, and the effects will be potentially harmful. However, the agency has proposed mitigation commitments involving one or more forms of mitigation to reasonably and acceptably mitigate the harmful effects.

(b) Effects include, but are not limited to, partial or total destruction or alteration of the historic property, detrimental alteration of the properties' surrounding environment, detrimental visual, spatial, noise or atmospheric impingement, increasing access with the chances of resulting damage, and neglect resulting in deterioration or destruction.

(c) Effect determinations shall be submitted to SHPD for review and approval. The determinations shall include a map showing the location of the project and a general discussion of the project's scope of work, so the nature of possible effects can be understood.

- (1) If the SHPD disagrees with the effect determinations, a letter that specifies the disagreements shall be sent within forty five days of SHPD receipt of the effect determinations. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the effect determinations.
- (2) If the SHPD agrees with the effect determinations, the SHPD shall send a letter of agreement within forty five days of SHPD receipt of the effect determinations.

(d) No historic properties affected determinations for architectural properties shall be expedited when the SHPD agrees with the agency that minor changes to a building or structure will not affect its significant character. Because these changes are typically non-controversial and require

prompt processing, the SHPD shall write its concurrence as a "no historic properties affected" determination.

- (1) The SHPD shall post notifications of any such "no historic properties affected" determinations every Friday either at the SHPD office or on the SHPD website. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day.
- (2) Interested persons have the opportunity to comment on such determinations within thirty days. At the end of thirty days if objections to the minor changes to the properties are submitted, the SHPD may reconsider its findings under the provisions of section 13-275-11.

(e) When the SHPD agrees that the action will not affect any significant historic properties, this is the SHPD's written concurrence and historic preservation review ends. If the project will have an "effect, with proposed mitigation commitments", then mitigation commitments and detailed mitigation plans shall be developed by the agency and approved by SHPD, as discussed in the following section.

[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-8 Mitigation. (a) If a project will have an "effect" (impact) on significant historic properties, then a mitigation commitment proposing the form of mitigation to be undertaken for each significant historic property shall be submitted by the agency to the SHPD for review and approval.

- (1) Mitigation can occur in five forms.
 - (A) Preservation, which may include avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, interpretation, or appropriate cultural use.
 - (B) Architectural recordation, which involves the photographic documentation and possibly the measured drawing of a building, structure or object prior to its alteration or destruction.

- (C) Archaeological data recovery, which enables the recovery of an adequate and reasonable amount of the significant information from a significant historic property prior to its alteration or destruction. Data recovery may include archaeological mapping, surface collection, excavation, monitoring, laboratory analyses, and interpretive analyses.
 - (D) Historical data recovery, which involves researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
 - (E) Ethnographic documentation, which involves interviewing knowledgeable individuals and researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
- (2) If properties with significance, so evaluated under criterion "e", as defined in paragraph 13-275-6(b)(5), are involved, the agency shall consult with ethnic organizations or members of the ethnic group for whom the historic properties have significance under criterion "e" to seek their views on the proposed forms of mitigation. For native Hawaiian properties deemed significant under paragraph 13-275-6(b)(5) the Office of Hawaiian Affairs also shall be consulted.
- (3) The proposed mitigation commitment shall include:
- (A) A table of the significant historic properties, indicating which form or forms of mitigation is proposed for each property--preservation, archaeological data recovery, architectural documentation, historical documentation, or ethnographic documentation;
 - (B) Brief text justifying these proposed treatments. Similar sites can be discussed together in this justification; and

(C) If properties deemed significant under paragraph 13-275-6(b)(5) are involved, a description of the consultation process used, a list of the individuals and organizations contacted, and a summary of the views and concerns expressed.

(b) If the proposal is not acceptable, SHPD shall send a letter outlining needed changes or a determination letter not concurring with the project, within forty five days of SHPD receipt of the mitigation commitments. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the mitigation commitments.

(c) If the commitments are acceptable, the SHPD shall send a determination letter concurring with the proposed project within forty five days of SHPD receipt of the mitigation commitments.

(d) If identified unmarked burial sites are present, the relevant island burial council of the department must approve the proposed mitigation commitments for native Hawaiian burials, following section 6E-43, HRS, and section 13-300-33.

(e) Should either the agency or any interested person disagree with the SHPD's determination letter, the disagreeing party shall within thirty days of the determination letter submit in writing a request for the Hawaii historic places review board to hold a non-judicial appeal hearing in accordance with chapter 91. The intent of the appeal hearing is to provide an informal fact-finding process, characterized by great latitude, in which all parties have ample opportunity to present information to the Hawaii historic places review board for consideration, and answer any questions the review board may have. The request for an appeal hearing shall include:

- (1) A statement indicating which step in the process the appellant believes is in error;
- (2) Information to support the appellant's position; and
- (3) Any other information, including legal memoranda, the appellant may wish the review board to read prior to the hearing.

(f) The review board shall schedule an appeal hearing to be held within thirty days of receipt of the appeal request. The hearing process will proceed in the following manner:

- (1) The review board shall receive testimony from the SHPD on the basis of its determination letter;
- (2) The appellant will present its basis for appealing the SHPD determination letter;
- (3) Thereafter, the review board will hear and receive testimony from any other interested persons or agencies;
- (4) The review board may ask questions of those testifying before it; and
- (5) Once the review board has reviewed all the written and oral testimony, it will render a decision regarding the appeal within fifteen days of the conclusion of the hearing.

(g) Should either the agency or any interested person be dissatisfied with the decision of the review board, they may within thirty days of the review board decision apply to the governor to take action as the governor deems best in overruling or sustaining the department.

(h) After mitigation commitments are accepted by SHPD, the agency shall provide detailed plans for the mitigation work for SHPD review and approval. The approved plans shall serve as scopes of work for mitigation.

- (1) Archaeological data recovery plans shall meet the minimal standards for data recovery as provided in chapter 13-278. Qualifications of the principal investigator directing this work shall comply with chapter 13-281. An archaeological permit from the SHPD is required to undertake this work, as provided in chapter 13-282. Plans may include monitoring of construction by a professional archaeologist where further significant historic remains are likely to be found after data recovery. Minimal standards for the monitoring and report shall comply with chapter 13-279. Qualifications of the principal investigator directing the monitoring shall comply with chapter 13-281.
- (2) Architectural recordation plans shall meet the minimal standards as provided by historic American building survey (HABS) photographic specifications. Qualifications for the historian, architect, or architectural historian directing this work shall comply with chapter 13-281.

- (3) Historical data recovery plans shall conform to SHPD guidelines for historic documentation. Qualifications for the historian directing this work shall comply with chapter 13-281.
- (4) Ethnographic documentation plans shall conform to SHPD guidelines for ethnographic documentation. Qualifications for the ethnographer directing this work shall comply with chapter 13-281.
- (5) Preservation plans shall meet the minimal standards as provided by chapter 13-277 and the Secretary of the Interior's standards for historic preservation projects for architectural properties. If preservation plans involve historic properties deemed significant under paragraph 13-275-6(b)(5), the agency shall consult with interested individuals and organizations of the relevant cultural group with which the properties are associated. For native Hawaiian properties deemed significant under paragraph 13-275-6(b)(5) the Office of Hawaiian Affairs also shall be consulted. The plans shall describe the consultation process used, list the individuals and organizations consulted, and summarize the views and concerns expressed.
- (6) Any interested persons may comment on the detailed mitigation plans. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the detailed mitigation plans. The SHPD shall take all comments into consideration when issuing its letter of acceptance or non-acceptance of the plans.
- (7) If a detailed mitigation plan is not acceptable, SHPD shall send a letter outlining needed changes, within forty five days of SHPD receipt of the plan. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the plan.
- (8) If the detailed mitigation plan is acceptable, the SHPD shall send a letter of agreement within forty five days of receipt of the plan. Once a plan is accepted, work can then proceed on the plan.

letter within thirty days to the agency agreeing and stating construction may proceed, with the understanding that Step 2 must be completed to conclude the historic preservation process. If the measures have not been successfully completed, the SHPD shall write a letter within thirty days to the agency indicating what needs to be completed. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the documentation.

- (2) Step 2. The agency shall submit to the SHPD a completion report for the data recovery work, architectural recordation, or final preservation work. The SHPD shall write a letter to the agency within thirty days stating the completion report is acceptable and that the historic preservation process is concluded. If the completion report is not acceptable, the SHPD shall write a letter within thirty days to the agency indicating needed changes. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the completion report.

(e) In cases involving solely historic data recovery or ethnographic documentation where no field study of the historic property or properties is to occur, the agency has the option to request an accelerated verification process to proceed with the construction project and to submit a completion report at a later date, agreed upon with the SHPD. The agency shall submit the request in writing to the SHPD with reasons and with a date for submittal of the completion report. If the SHPD agrees, it shall send a letter to the agency within thirty days stating construction may proceed, with the agreement that the report shall be submitted to the SHPD by the agreed upon date and shall then be reviewed in accordance with subsections 13-275-9(a) through (c). If the SHPD does not agree with the request, the SHPD shall write a letter within thirty days to the agency indicating the SHPD's concerns. If the agency wishes to proceed with the accelerated verification process, the agency shall correct the problems, consulting with the SHPD as needed to

resolve differences, and resubmit the request.

(f) Once a final report is accepted, the agency shall ensure that seven copies are made available to the same repositories as the survey reports as noted in paragraph 13-275-5(e)(3). [Eff]
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-10 Conclusion of the historic preservation review process. The historic preservation review process ends when:

- (1) The SHPD agrees that adequate procedures have been taken to determine if historic properties are likely to be present in the project area, and no historic properties are found to be present or historic properties are considered unlikely to be present;
- (2) The SHPD agrees that no historic properties will be affected by the project; or
- (3) The SHPD agrees to a detailed mitigation plan to handle an effect to significant historic properties that are present and this plan is verified by the SHPD to have been successfully executed. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-11 Reconsideration of findings after the process is closed. (a) The SHPD shall reconsider the findings under sections 13-275-5 (adequate identification and inventory procedures), 13-275-6 (significance evaluations), 13-275-7 (determination of effects), and 13-275-8 (mitigation), when new information is submitted by an interested party with a request for reconsideration. To be considered, the inquiry must address a specific problem in the findings with supportive new evidence presented. The agency conducting the project shall be promptly notified by the SHPD of the request for reconsideration. An inquiry to the SHPD will not suspend action on a project, but the agency shall take all measures to avoid adverse effects to significant historic properties while the SHPD is reviewing a request. Within ten working days of receipt of the request at the SHPD office, the SHPD shall advise in writing the

interested party and the agency undertaking the project of the SHPD conclusions.

(b) If the SHPD conclusions identify an inaccurate significance evaluation, an inappropriate general mitigation commitment, or a flaw in the detailed mitigation plan, then the SHPD and the agency undertaking the project shall attempt to reach agreement on how to correct the problem. If agreement cannot be reached within ten working days, the Hawaii historic places review board shall be asked for their advice. The review board shall provide their advice within thirty days after receiving a request. [Eff
] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-5.5, 6E-7, 6E-8)

§13-275-12 Discovery of previously unknown historic properties during implementation of a project. If a previously unknown historic property is found after the acceptance of the inventory report or during the implementation of a project, then the historic preservation review process is reopened. This action, however, applies only to the immediate area where a historic property is discovered, and the historic preservation review process is accelerated, following the procedures of chapter 13-280. [Eff
] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-13 Emergency projects. (a) When an agency proposes an emergency project as an essential and immediate response to an imminent threat to public health, safety, or welfare as a result of natural disaster or state of emergency as provided by law, the agency shall consult with the SHPD to attempt to develop consensus plans to take into account the effect of the project on significant historic properties. This consensus shall be reached within three working days. If consensus is not reached, appeal to the governor for an immediate decision shall occur.

(b) This section does not apply to projects that will not be implemented within thirty days after the disaster or emergency. Such projects shall be reviewed in accordance with the normal historic preservation review process. [Eff
] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-14 Penalty. Any violation of this chapter may result in denial or revocation of the SHPD's written concurrence or agreement, and prosecution under Section 6E-11, Hawaii Revised Statutes. [Eff _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-11)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-275, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-275 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Peter T. Young,
Chairperson
Board of Land and Natural
Resources

APPROVED:

Linda Lingle, Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed